

In Re

VINCENT THAKUR SINGH, dba
PERFECT FINANCIAL GROUP, INC.,
dba AAMCO STOCKTON, INC., dba
AAMCO ORANGEVALE, INC., fdba
ACCEPTANCE CAPITAL, fdba
PERFECT MORTGAGE and MALANIE
GAY SINGH

Debtors.

MICHAEL F. BURKART, CHAPTER 7
TRUSTEE,

Plaintiff,

v.

URMILLA PRASAD,
Defendant.

Case No.: 10-42050-D-7

Chapter 7

Adv. Pro. No.: 12-2447-D
DCN: HLC-001

Date: April 15, 2014
Time: 10:00 a.m.
Dept: D (Courtroom 34)

Chapter 7 trustee Michael Burkart ("plaintiff") has filed a motion for summary judgment against defendant Urmilla Prasad ("defendant"). The motion was noticed under LBR 9014-1 (f)(1) and is unopposed. The court submits to the district court the following findings of fact and conclusions of law, pursuant to 28 U.S.C. § 157(c)(1).

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), *aff'd*, Exec. Benefits Ins. Agency v.

1 Arkison, 134 S.Ct. 2165, 2175 (2014), bankruptcy courts do not
2 have constitutional authority to enter final judgments on
3 fraudulent transfer claims against non-creditors. 702 F.3d at
4 565. The Bellingham court, however, also held that a defendant's
5 right to a hearing in an Article III court is waivable. Id. at
6 566. "[A] litigant's actions may suffice to establish consent"
7 to adjudication by a non-Article III court. Id. at 569. Here,
8 defendant is neither a creditor in the underlying bankruptcy
9 case, nor was defendant sufficiently active in the case to give
10 rise to a finding of a waiver of defendant's right to an Article
11 III adjudication. Accordingly, the court does not have authority
12 to enter a final judgment on the fraudulent transfer claim
13 asserted against defendant. Thus, the court submits the
14 following as its findings of fact and conclusions of law,
15 together with its recommendation, to the district court.

16 **ANALYSIS**

17 The evidence submitted by the trustee consists of (1) the
18 declaration of his attorney, who testifies to certain discovery
19 propounded to the defendant and to the defendant's responses or
20 lack thereof; (2) exhibits consisting of copies of checks signed
21 by the debtor in the underlying case, Vincent Singh, payable to
22 the defendant, and a copy of the trustee's requests for
23 admissions to the defendant; and (3) a declaration of Gerard A.
24 McHale, Jr., who testifies that in his opinion, Vincent Singh
25 was operating a Ponzi scheme from 2005 or 2006 until August of
26 2010, and that "all payments from and to investors during that
27 period which were for 'investment' purposes were payments in
28 furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. A


1 copy of Mr. McHale's expert report is also filed as an exhibit.
2 Based in large part on his requests for admissions to the
3 defendant, which the trustee's counsel testifies went
4 unanswered, the trustee asks the court to conclude that the
5 payments made by Singh to the defendant between August 19, 2008
6 and August 19, 2010, a total of \$47,399, are avoidable as
7 fraudulent transfers pursuant to § 548(a)(1)(A) of the
8 Bankruptcy Code, and may be recovered from the defendant
9 pursuant to § 550.

10 The motion depends upon the trustee's requests for
11 admissions directed to the defendant and on the defendant's
12 failure to respond to them. Plaintiff has filed, as a
13 supplemental exhibit, a signed copy of the proof of service for
14 the requests for admissions directed to the defendant.
15 Specifically, the trustee asked the defendant to admit that, for
16 each payment identified by the trustee in a list attached to the
17 requests, the payment (1) was a payment from Vincent Singh, (2)
18 was received by the defendant, and (3) was made pursuant to a
19 Ponzi scheme orchestrated by Vincent Singh. Those facts, which
20 are deemed admitted by the defendant's failure to respond (Fed.
21 R. Civ. P. 36(a)(3), incorporated herein by Fed. R. Bankr. P.
22 7036), together with the trustee's evidence of Vincent Singh's
23 Ponzi scheme - the McHale declaration and expert report, are
24 sufficient to demonstrate that the payments to the defendant
25 constituted actual fraudulent transfers. Although the defendant
26 pled good faith as an affirmative defense in his answer to the
27 complaint, he has failed to submit any evidence of the same in
28 response to this motion. Accordingly, the court concludes there

1 is no genuine dispute as to any material fact of the trustee's
2 causes of action under § 548(a)(1)(A) and § 550 and the trustee
3 is entitled to judgment on those causes of action as a matter of
4 law.

5 For the reasons stated, the court recommends granting the
6 motion for summary judgment and entering a judgment in favor of
7 plaintiff in the amount of \$47,399.

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9 **Dated:** April 25, 2015

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13 **Robert S. Bardwil, Judge**
United States Bankruptcy Court
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